

RULE 9019-2 ALTERNATIVE DISPUTE RESOLUTION

A Bankruptcy Dispute Resolution Program ("BDRP") will be maintained and available to facilitate the resolution of disputes.

The BDRP is to operate in such a way as to allow the participants to use a variety of alternative dispute resolution methods. These methods may include but are not limited to: mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be those that are appropriate, as determined by the Resolution Advocate and the parties.

(a) Cases Eligible for Inclusion in the BDRP. All controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case, will be eligible for referral to the BDRP except:

- (1) Employment and compensation of professionals;
- (2) Compensation of trustees and examiners;
- (3) Objections to discharge under 11 U.S.C. § 727, except where such objections are joined with disputes over dischargeability of debts under 11 U.S.C. § 523; and
- (4) Matters involving contempt or other types of sanctions.

(b) Panel of Resolution Advocates. The court shall will maintain a panel of professionals (the "Panel") who have volunteered to serve as Resolution Advocates to assist in resolution of matters referred to the BDRP.

- (1) An application to serve as a member of the Panel (see

Local Bankruptcy Form J-1) must be submitted to the BDRP Administrator by the deadlines established by the court each year.

(2) In order to qualify for service as a Resolution Advocate, each applicant must certify that the applicant is willing, (A) to serve as a Resolution Advocate for a minimum of one year, and (B) to evaluate or mediate pro bono matters not more often than once in six (6) months, subject only to unavailability due to conflicts, personal or professional commitments, or other matters that would make service inappropriate;

(3) The Applicant may indicate the Applicant's availability to act as a Compensated Resolution Advocate in addition to the unpaid services described in paragraph (2) above. The Applicant should state the rates the Applicant would charge for such services;

(4) The court may limit panel membership to keep the Panel at an appropriate size and to ensure that the Panel is comprised of individuals with broad-based experience, superior skills and qualifications.

(c) Administration of the BDRP. A judge of this court will be appointed by the Chief Judge to serve as the BDRP Administrator. The BDRP Administrator will be aided by a staff member of the court, who will collect applications, maintain the roster of the Panel, track and compile results of the BDRP, and handle such other administrative duties as are necessary.

(d) Assignment to Dispute Resolution.

(1) If requested in writing by the parties, a contested matter, adversary proceeding, or other dispute (hereinafter collectively referred to as "Matter" or "Matters") may be assigned to the BDRP by order of the court.

(2) While as a general rule participation in the BDRP is voluntary, any judge, acting sua sponte or on the request of a party, may designate specific Matters for inclusion in the program.

(3) If a Matter is assigned to the BDRP, the parties will be presented with the order assigning the Matter to the BDRP and a current roster of the Panel. The parties will be given the opportunity to confer and designate a mutually acceptable Resolution Advocate as well as an alternate Resolution Advocate.

(4) With the consent of the Judge, the parties may select a Resolution Advocate who is not a member of the Panel, who shall be subject to the applicable provisions of this Rule.

(5) If the parties cannot agree, or if the judge deems selection by the court to be appropriate, the judge will select a Resolution Advocate. .

(6) The order assigning a Matter to the BDRP will be Local Bankruptcy Form J-2. The original will be docketed and retained in the case or adversary proceeding file and copies mailed by the party so designated by the judge to the assigned Resolution Advocate, the alternate Resolution Advocate, the BDRP Administrator's staff assistant and to all parties with

a cognizable interest in the dispute. Assignment to the BDRP does not alter or affect any time limits, deadlines, scheduling matters or orders in any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the court.

(7) A Resolution Advocate must promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the Resolution Advocate's profession. If the Resolution Advocate's firm has represented one or more of the parties, the Resolution Advocate must promptly disclose that circumstance to all parties in writing. A party who believes that the assigned Resolution Advocate has a conflict of interest may promptly bring the matter to the attention of the Resolution Advocate. If the Resolution Advocate does not withdraw from the assignment, the matter must be brought to the attention of the court by the Resolution Advocate or any party.

(e) Dispute Resolution Procedures

(1) Within seven (7) calendar days of notification of appointment, the Resolution Advocate shall:

(A) give notice to the parties of the time and place for the BDRP conference, which conference will commence not later than thirty (30) calendar days following the date of appointment of the Resolution Advocate, and which will be held in a suitable neutral setting, such as the office of the Resolution Advocate; and,

(B) circulate for signature the Confidentiality

Agreement, Local Bankruptcy

Form J-3; or

(C) if the Resolution Advocate is not available to serve in the Matter, notify the parties, the alternate Resolution Advocate, and the BDRP Administrator's staff assistant of that unavailability. The alternate Resolution Advocate will thereafter serve as the Resolution Advocate. Upon written stipulation between the Resolution Advocate and the parties, the BDRP conference may be continued for a period not to exceed thirty (30) days.

(2) Unless modified by the Resolution Advocate, no later than fifteen (15) calendar days after the date of the order assigning a Resolution Advocate, each party must submit a written BDRP statement directly to the Resolution Advocate. For good cause, the Judge may order a different schedule. The Resolution Advocate must keep a BDRP Statement confidential and not disclose its contents to anyone without express written consent of the party submitting it.

(3) Such statements will not exceed ten (10) pages (not counting exhibits and attachments). While such statements may include any information that would be useful, they must:

(A) identify the person(s), in addition to counsel, who will attend the session as representative of the party with decision making authority;

(B) describe briefly the substance of the dispute;

(C) address whether there are legal or factual issues whose early resolution might appreciably reduce the scope of the dispute or contribute significantly to settlement;

(D) identify the discovery that could contribute most to equipping the parties for meaningful discussions;

(E) set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers and demands;

(F) make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial;

(G) indicate presently scheduled dates for further status conferences, pretrial conferences, trial or otherwise; and

(4) Parties may identify in the BDRP statements persons connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the BDRP conference would improve substantially the prospects for making the session productive; the fact that a person has been so identified, will not, by itself, result in an order compelling that person to attend the BDRP conference. A separate motion and court order are required.

(5) Parties must attach to their written BDRP statements copies of documents out of which the dispute has arisen, e.g., contracts and those documents whose availability would

materially advance the purposes of the BDRP conference.

(6) The BDRP statements shall not be filed. The court shall not have access to them.

(7) Counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in pro se) will personally attend the BDRP conference and any adjourned sessions of that conference. Counsel for each party must come prepared to discuss resolution of the Matter in detail and in good faith.

(8) All individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall attend the BDRP conference in person, unless excused by the Resolution Advocate for cause. A party or lawyer who is excused from appearing in person at the BDRP conference may be required to participate by telephone.

(9) Willful failure to attend the BDRP conference, or other violations of this Rule, shall be reported to the court by the Resolution Advocate and may result in the imposition of sanctions by the court.

(10)(A) All written and oral communications made in connection with or during any BDRP conference, including the BRRP statements, will be subject to all protections afforded by Fed. R. Evid. 408. — No such communication may be used in any present or future proceeding for any purpose. Nevertheless, if all of the parties to the BDRP

and the Resolution Advocate agree in writing, such communications may be disclosed. Notwithstanding the foregoing, this paragraph 10(A) does not require the exclusion of any evidence:

(i) otherwise discoverable, merely because it is presented in the course of a BDRP conference; or

(ii) offered for another purpose, such as providing bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(B) Nothing in this section (e) will be construed to prevent parties, counsel or Resolution Advocates from responding in absolute confidentiality, to inquiries or surveys by persons authorized by this court to evaluate the BDRP. Nor will anything in this section be construed to prohibit parties from entering into written agreements resolving some or all of the Matter or entering or filing procedural or factual stipulations based on suggestions or agreements made in connection with a BDRP conference.

(11) If the Resolution Advocate makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party must promptly transmit that suggestion to the client.

(12) The Resolution Advocate has no obligation to make any written comments or recommendations, but may, as a matter

of discretion, provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum will be filed with the clerk or made available in whole or in part, directly or indirectly, to the court.

(13) The BDRP conference will proceed informally. Rules of evidence do not apply. There will be no formal examination or cross-examination of witnesses. Where necessary, the Resolution Advocate may conduct continued BDRP conferences after the initial session. As appropriate, the Resolution Advocate may:

(A) permit each party (through counsel or otherwise) to make an oral presentation of its position;

(B) help the parties identify areas of agreement and, where feasible, enter stipulations;

(C) assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Resolution Advocate that supports these assessments;

(D) assist the parties, through separate consultation or otherwise, in settling the dispute;

(E) estimate, where feasible, the likelihood of liability and the dollar range of damages;

(F) help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to participate in meaningful settlement discussions or to

posture the case for disposition by other means; and

(G) determine whether some form of follow-up to the conference would contribute to the case development process or to settlement.

(f) Procedure Upon Completion of Dispute Resolution Session.

Upon the conclusion of the BDRP conference, the following procedure will be followed:

(1) If the parties have reached an agreement regarding the disposition of the Matter, the parties, with the advice of Resolution Advocate, will determine who will prepare the writing to dispose of the Matter, and they may continue the BDRP conference to a date convenient to all parties and the Resolution Advocate as necessary. Where required by provisions of the Bankruptcy Code or other applicable law, they must promptly submit the fully executed stipulation to the court for approval. Where court approval is not required, the written agreement disposing of the matter will be enforceable pursuant to applicable law.

(2) The Resolution Advocate must file with the court and serve on the parties and the BDRP Administrator's staff assistant, within ten (10) calendar days, Local Bankruptcy Form J-4, showing whether there has been compliance with the BDRP conference requirements of this Rule, and whether or not a settlement has been reached. Regardless of the outcome of the BDRP conference, the Resolution Advocate will not provide the court with any details of the substance of the conference;

and

(3) In order to assist the BDRP Administrator in compiling useful data to evaluate the BDRP, and to aid the court in assessing the efforts of the members of the Panel, the Resolution Advocate will provide the BDRP Administrator's staff assistant with an estimate of the number of hours spent in the BDRP conference and otherwise on the matter, which report must be on Local Bankruptcy Form J-5.

(g) Compensated Resolution Advocacy. In addition to serving as a Resolution Advocate on a pro bono basis, a panel member may act as a Compensated Resolution Advocate ("CRA") in other matters.

(1) The CRA will be appointed as set-forth above in this Rule, but the appointing Order will set-forth the terms of the CRA's engagement.

(2) If the CRA is to receive compensation from the bankruptcy estate,

(A) a notice shall be filed setting forth the identity of the Resolution Advocate (whether or not on the panel) and the terms and conditions of compensation (including hourly rate) with a right to object/comment on such terms and conditions, subject to such time limitations as the Judge deems reasonable under the circumstances;

(B) if the proposed compensation to the Resolution Advocate is \$3,000.00 or less, there is no need for further court order to authorize payment to the

Resolution Advocate;

(C) if the proposed compensation to the Resolution Advocate is proposed to be more than \$3,000.00, a notice for an award of final compensation shall be filed by or on behalf of the Resolution Advocate and served as an application under Bankruptcy Rule 2002(a)(6) with an opportunity for parties to object/comment within twenty (20) days after the filing of the notice; however, the inability of the BDRP to result in a settlement/stipulation shall not be a factor to be used in awarding less compensation than would be allowed based on an application of the terms and conditions of compensation upon retention of the Resolution Advocate; and

(D) the estate's share of such compensation shall be an administrative claim against the estate.

(3) Unless the appointing order provides for compensation solely by the bankruptcy estate, no CRA will be appointed without the consent of all parties to the controversy submitted to the BDRP.